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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Insurance Adjusters Act of 2001."

SECTION 2. It is the purpose and intent of the general assembly to establish guidelines for the business of adjusting insurance claims in the state of Tennessee and to provide procedures for the licensing of adjusters.

SECTION 3. Definitions. As used in this part:

(1) "Adjuster" means any person who for any consideration whatsoever, including but not limited to a commission, engages in business or solicits employment to investigate, settle, adjust and report to such person's employer or principal with respect to claims arising under insurance contracts on behalf of the insurer or insured or a person who directly supervises or manages such person.

(2) "Catastrophe" or "emergency adjuster" means a person who is not a licensee under this part but who has been designated and certified to the commissioner either by a public official having supervision of adjusters in the person's state of residence who certifies that the person has passed a written examination, by a licensed independent adjuster, or by an insurer as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, and whom the commissioner may license, in the event of catastrophe or emergency, for the purposes and under the conditions which the commissioner shall determine, to adjust claims, losses, or damages under policies of insurance.

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(3) "Commissioner" means the commissioner of commerce and insurance.

(4) "Company employee adjuster" means a person who is employed on an insurer's staff of adjusters, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

(5) "Department" means the department of commerce and insurance.

(6) "Independent adjuster" means a person who is not an employee of an insurer, who undertakes on behalf of such insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss or damage.

(7) "Nonresident adjuster" means a person who is not a resident of this state, is a currently licensed or authorized adjuster in such person's home state for the type or kinds of insurance such person intends to adjust claims for in this state and does not maintain an office in this state for the purpose of adjusting losses in this state.

(8) "Person" includes any individual, firm, company, association, organization, limited liability company, partnership and corporation.

(9) "Public adjuster" means a person who, for compensation of any value whatsoever, acts on behalf of or aids in any manner, an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any

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policy of insurance covering real or personal property or any person who advertises, solicits business, or holds himself out to the public as an adjuster of those claims and any person who, for compensation, investigates, settles, adjusts, advises, or assists an insured with reference to claims for those losses on behalf of any public adjuster.

SECTION 4. Inapplicability of part.

This part does not apply to:

- (1) Company employee adjusters;
- (2) An officer or employee of the United States of America or of this state or of a political subdivision thereof while the officer or employee is engaged in the performance of such person's official duties;
- (3) A charitable philanthropic society duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;
- (4) An attorney at law admitted to practice in this state, when advising clients as to insurance as a function incidental to the practice of law;
- (5) Agents licensed by this state performing duties in connection with insurance transacted by them; or
- (6) Persons who adjust claims arising under contracts of life or marine insurance or annuities.

SECTION 5. License to engage in business.

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(a) No person shall engage in a business regulated by this part, or act or assume to act as, or represent himself to be a licensee unless such person is licensed under this part.

(b) In addition to any other penalty set forth in this part, any person violating this section shall be guilty of a Class A misdemeanor.

SECTION 6. Adjuster license types.

A qualified individual may be licensed under this part as one of the following:

- (a) A public adjuster; or
- (b) An independent adjuster.

SECTION 7. Licensed independent adjuster required; insurers' responsibility.

(a) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an independent adjuster unless the person is currently licensed as an independent adjuster pursuant to this part.

(b) Before referring any claim or loss, the insurer shall ascertain from the department whether the proposed independent adjuster is currently licensed as such. Once the insurer has ascertained that a person is so licensed, it may assume that such person is so licensed until the insurer has knowledge, or receives information from the department, to the contrary.

SECTION 8. Application for license.

An application for a license under this part must be on a form approved by the commissioner and accompanied by the application fee provided by this part.

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SECTION 9. Prerequisites to grant of resident public adjuster's license, independent adjuster license.

The commissioner shall issue a license to an applicant upon determining that the applicant has paid all applicable fees and possesses the following qualifications:

- (1) Is an individual of at least eighteen (18) years of age.
- (2) Is a bona fide resident of this state.
- (3) Is trustworthy and has such a business reputation as would reasonably assure that such person would act as an adjuster without detriment to the public.
- (4) Has passed a written examination, approved by the commissioner, that reasonably tests the knowledge of the applicant concerning the applicable insurance laws and rules and regulations of the commissioner, and the duties and responsibilities of an adjuster, the adjusting of damages or losses under insurance contracts, and the terms and effect of provisions of insurance contracts for that class of insurance for which licensure is requested.
- (5) Has filed a bond with the commissioner, pursuant to this part.

SECTION 10. When examination not required for resident licenses under this part.

An applicant who becomes a resident of this state and who has filed with the commissioner certification by a public official having supervision of holders of comparable licenses in the prior state of residency evidencing that the applicant has passed a written examination and holds a similar licensee in good standing is not

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required to take the examination required by this part. However, the commissioner may require the applicant to take that portion of the examination pertaining to Tennessee law and rules and regulations of the commissioner.

SECTION 11. License, adjusters.

(a) An applicant for a license as an adjuster may qualify and such applicant's license, when issued, may cover adjusting in any one of the following classes of insurance:

- (1) All lines of insurance except life, health and annuities.
- (2) Motor vehicle physical damage insurance.
- (3) Property and casualty insurance.
- (4) Worker's compensation insurance.

(b) An application for a license under this part shall specify which of the foregoing classes of business the application for a license covers.

SECTION 12. License, nonresident adjusters

(a) The commissioner may, upon application therefor, issue a license under this part to an applicant for a nonresident adjuster's license upon determining that either conditions (1) and (2) or conditions (1) and (3) below are satisfied:

- (1) The applicant has satisfied all requirements for a resident license that does not pertain to residency or examination.

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(2) The public official having supervision of adjusters in the applicant's state of residence certifies that the applicant has passed a written examination.

(3) The applicant has passed the Tennessee examination for such license.

(b) When under the laws of any other state any fine, tax, penalty, license fee, deposit of money, security or other obligation, limitation, or prohibition is imposed upon resident insurance adjusters of this state in connection with the issuance of, and activities under, a nonresident adjuster's license under the laws of that state as to Tennessee resident insurance adjusters, then so long as these laws continue in force or are so administered, the same requirements, obligations, limitations, and prohibitions, of whatever kind, shall be imposed upon every insurance adjuster of that other state whenever doing business in this state under a nonresident adjuster's license issued under this part.

SECTION 13. Catastrophe or emergency adjusters.

(a) In the event of a catastrophe or emergency, the commissioner may issue a license, for the purposes and under the conditions which the commissioner shall fix and for the period of emergency as the commissioner shall determine, to persons who are not licensed adjusters under this part but who have passed the Tennessee examination for an adjuster's license as described in this act and been designated and certified to the commissioner as qualified to act as adjusters either by a public official having supervision of

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adjusters in the person's state of residence who certifies that the person has passed a written examination, by a licensed independent adjuster, or by an authorized insurer to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer. The fee for such license shall be as set forth by this part.

(b) If any person who has been permitted to adjust such losses, claims, or damages under the terms and conditions set forth in this section engages in any of the misconduct or activities prohibited by this part, the commissioner may, without notice and a prior hearing, issue an order summarily suspending or revoking the license granted by this section.

SECTION 14. Filing of addresses and telephone numbers.

Each licensee under this part shall file with the commissioner such licensee's complete residence and business addresses and telephone numbers, and shall notify the commissioner, in writing, of a change of residence or business address or telephone number within thirty (30) days of such change.

SECTION 15. Bonds.

(a) No license shall be issued under this part unless the applicant files with the commissioner a surety bond executed by a surety company authorized to do business in this state in the sum of fifty thousand dollars (\$50,000) conditioned upon the faithful and honest conduct of business by such applicant. Such bond as to its form, execution, and sufficiency of the sureties shall be approved by the commissioner.

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(b) The bond required by this part shall be taken in the name of the people of this state and every person injured by the willful, malicious, or wrongful act of the principal may bring an action on the bond in such person's own name to recover damages suffered by reason of such willful, malicious, or wrongful act.

(c) Every licensee shall at all times maintain on file with the commissioner the surety bond required by this part in full force and effect and upon failure to do so the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefor, in the form proscribed by the commissioner, is filed together with a proper bond. The commissioner may deny the application:

(1) For any reason which would justify a refusal to issue, a suspension or revocation of a license; or

(2) For the performance by the applicant of any practice while under suspension for failure to keep his bond in force, for which a license under this part is required.

(d) Bonds executed and filed with the commissioner pursuant to this part shall remain in force and effect until the surety has terminated future liability by thirty (30) day written notice to the commissioner.

SECTION 16. Denial of application for license.

Any application for a license under this part may be denied by the commissioner if the commissioner finds that the applicant has not satisfied the requirements for the license for which such applicant has made application, or for any reason that would

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constitute grounds for the revocation or suspension of such license. The commissioner may deny any application for a license under this part without a hearing.

SECTION 17. License Term.

Each license issued under this part shall remain in effect for two (2) years from the date of issuance unless revoked or suspended pursuant to this part.

SECTION 18. Renewal of license.

(a) Every license issued under this part, except catastrophe or emergency adjuster licenses, shall be renewable biennially, provided that the licensee:

- (1) Submits a biennial renewal form approved by the commissioner;
- (2) Pays the renewal fees provided by this part; and
- (3) Presents proof of the completion of the continuing education requirements set forth in this part and in any rules promulgated hereunder.

(b) If the licensee does not comply with the renewal requirements set forth in subsection (a) the license shall automatically expire two (2) years from its date of issuance.

(c) A license issued by the commissioner under this part, that has expired, except a catastrophe or emergency adjuster's license, may be reinstated without examination at any time within twelve (12) months after the expiration

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date of such license, upon the licensee's submission of the following to the commissioner:

- (1) a reinstatement form approved by the commissioner;
- (2) the renewal fee provided by this part; and
- (3) a reinstatement fee in the amount of fifty percent (50%) of the

renewal fee.

(d) The commissioner shall promulgate rules and regulations for the implementation and administration of this section.

SECTION 19. Fees.

(a) The fees of the renewal of a license, the reinstatement of an expired license, an application for a license, and the fee for pre-licensing examination, required by this part, shall be promulgated by rule.

(b) The fees specified in this section shall not be refundable.

SECTION 20. Continuing education.

(a) Each adjuster shall obtain twelve (12) hours of continuing education credits during each twenty-four (24) month period beginning on July 1, 2002 as a condition for renewal of the license.

(b) The commissioner shall promulgate rules and regulations for the implementation and administration of this section.

SECTION 21. Contracts – public adjusters.

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(a) A public adjuster shall not provide services until a written contract with the insured has been executed, on a form filed with and approved by the commissioner.

(b) The written contract required by this section shall disclose in clear language and bold print the following:

(1) Identification of the public adjuster as an independent party not affiliated with an insurance company.

(2) The public adjuster's fee for services. If the public adjuster's fee is a contingency fee, the percentage shall be disclosed;

(3) Whether the public adjuster's fee is paid out of the loss settlement;

(4) That, at the option of the insured, the contract is voidable for three (3) days after execution thereof:

(5) The forms of service of notice of the exercise of the option to void the contract conform to the requirements of this section; and

(6) That the written contract required by this section shall constitute the entire agreement between the public adjuster and the insured.

(c) The written contract required by subsection (a) may not include any hold harmless agreement which provides indemnification to the public adjuster by the insured for liability resulting from the public adjuster's negligence, nor any

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power-of-attorney by which the public adjuster can act in the place and instead of the insured.

(d) A copy of the contract required by this section shall be given to the insured when the contract is executed. At the option of the insured, the insured may void the contract by notifying the public adjuster in writing by

(1) Registered or certified mail, return receipt requested, to the address shown on the contract, postmarked within three (3) days of the execution of the contract; or

(2) Personally serving the notice on the public adjuster within three (3) days of the execution of the contract. This option shall not apply if prior to the rescission the public adjuster has obtained a settlement offer from the insurer that the insured accepts. Furthermore, if the insured voids the contract before there has been such an offer to settle the claim, the adjuster is entitled to compensation to the extent of the fair market value for any services performed prior to the voiding of the contract.

SECTION 22. Prohibited Acts.

(a) A licensee under this part may not:

(1) Represent that such licensee is in any way connected with the federal government, a state government, a local government, or any subdivision thereof;

(2) Provide legal advice to the insured;

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(3) Permit an employee or agent in such person's own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under this part;

(4) Use any misrepresentation to solicit a contract or agreement to adjust a claim;

(5) Solicit or accept remuneration from, or have a financial interest in, any salvage, repair or other firm which obtains business in connection with any claim which such licensee has a contract or agreement to adjust;

(6) Offer to pay a fee, commission, or other valuable consideration to a person for referring a loss unless such licensee employs that person to so act for such licensee and that person is licensed to act as an adjuster under the provisions of this part;

(7) Knowingly use false evidence;

(8) Submit any report to such licensees' employer or client for whom information was being obtained without having exercised due diligence in ascertaining whether the facts and information in such report are true and correct;

(9) Knowingly make a false report to such licensee's employer or client for whom information was being obtained;

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(10) Divulge to any other person any information acquired by him except at the direction of the employer or a client for whom the information is obtained, except that such licensee may divulge such information to any law enforcement officer or district attorney, or the department of commerce and insurance, or as such licensee may be required to do so by law;

(11) Enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof;

(12) Fail to act with reasonable diligence and promptness upon communications with respect to claims arising under insurance policies;

(13) Permit any partner, shareholder or employee whose adjuster's license is currently suspended or has been revoked by the commissioner to engage in the business of adjusting insurance claims until such license has been reinstated;

(14) Act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death or noneconomic damages; or

(15) Hire or procure another to do any act prohibited by this section.

(b) In addition to the acts prohibited by subsection (a), a public adjuster may not:

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(1) Represent that such adjuster's services are required for the insured to submit a claim to the insured's insurance company or that such adjuster is a representative of an insurance company;

(2) Agree to any loss settlement without the insured's knowledge and consent; however, this provision does not apply where the insured invokes the appraisal provisions of the insurance policy, as an appraisal award is not a settlement;

(3) Advance money or any valuable consideration, except emergency services for the commencement of repairs, to an insured pending adjustment of a claim;

(4) Accept or agree to accept any money or other compensation from an attorney or other person acting on behalf of an attorney which the adjuster knows or should reasonably know is payment for the suggestion or advice by the adjuster to seek the services of the attorney or for the referral of any portion of a person's claim to the attorney; or

(5) Use illegal means in the collection or attempted collection of a debt or obligation.

SECTION 23. Fiduciary capacity; receipt of funds by public adjuster.

(a) All funds received as claim proceeds by any person acting as a public adjuster are received and held by that person in such person's fiduciary capacity. All such funds must be maintained by the public adjuster in an account at a bank in this state, and such funds must not be commingled at any time with any other

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funds, except for other funds held in a fiduciary capacity by the public adjuster that have been deposited in the same account. Any person who diverts or appropriates any fiduciary funds under this section for such person's own use is guilty of theft and may be punished for theft as provided by law.

(b) Where proceeds paid by an insurance company are paid jointly to the insured and any person acting as a public adjuster, the public adjuster must release such portion of the proceeds which are due to the insured within thirty (30) calendar days after the public adjuster's receipt of the monies from the insurance company.

SECTION 24. Practice of law.

Nothing in this part shall be construed as entitling any person to practice law in this state unless such person is admitted to the practice of law in this state.

SECTION 25. Records of transactions.

(a) Every licensee under this part shall keep at the address as shown on such licensee's license a record of all transactions consummated under such license. The record shall be in organized form and shall include:

(1) A record of each investigation or adjustment undertaken or consummated. Such record shall include the following:

(A) The name of the insured;

(B) The date, location and amount of loss;

(C) The name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

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(D) An itemized statement of the insured's recoveries from sources known to the licensee;

(E) A statement of any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment; and

(F) If the licensee is a public adjuster, a copy of the contract between the public adjuster and insured.

(2) Such other and additional information as may be required by rules and regulations of the commissioner.

(b) All records required to be maintained by this section shall be maintained for at least five (5) years after the termination of the insurance adjusting transaction and shall be open to examination by the commissioner at any time.

SECTION 26. Examination by commissioner.

(a) For the purpose of making such investigations as the commissioner may deem necessary for the proper administration of this part, the commissioner shall have inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath and to subpoena documents and other tangible things.

(b) Every person being examined pursuant to this section must provide to the commissioner convenient and free access between the hours of 8:00 a.m. and 5:00 p.m. to all books, records, documents and other papers relating to all

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business relating to such person's license issued by the commissioner under this part.

(c) All testimony, documents and other evidence required to be submitted to the commissioner pursuant to this section shall be privileged, and shall not be admissible as evidence in any other civil proceeding except those before the commissioner.

SECTION 27. Disciplinary guidelines for licensees under this part.

(a) The commissioner may refuse to issue, suspend or revoke a license pursuant to the procedures provided in T.C.A. §4-5-320 if the commissioner determines that the licensee has:

(1) Violated or failed to comply with any provision of this chapter applicable to licensure or any rule or regulation promulgated by the commissioner pursuant thereto, or aided and abetted another person to do so;

(2) Made any false statement or has given any false information in connection with an application for a license issued under this part; or a renewal or reinstatement of a license issued under this part;

(3) Converted to such licensees own use or improperly withheld money due others;

(4) Used fraudulent, coercive or dishonest practices or demonstrated incompetence or untrustworthiness in the transaction of business in relation to such license;

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(5) Been convicted of any felony, or of a misdemeanor of moral turpitude in a court of competent jurisdiction;

(6) Been arrested, charged and sentenced for the commission of a felony, or any crime involving moral turpitude where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

(7) Committed or knowingly permitted any employee to commit any act which would be cause for the suspension or revocation of such license;

(8) Failed to appear without reasonable cause or excuse in response to a subpoena lawfully issued by the commissioner;

(9) Had a license to practice a business or profession licensed under the laws of this state or any other state, territory, country, or the United States revoked, suspended, or annulled by any lawful licensing authority; surrender such a license in lieu of disciplinary proceedings; was denied or refused a license by any such lawful licensing authority pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority due to disciplinary proceedings;

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(10) Willfully failed or refused to render a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(11) Demonstrated untrustworthiness.

(b) In addition to or in lieu of any suspension or revocation of a license hereunder, the commissioner may assess a civil penalty against the licensee in an amount not to exceed one thousand dollars (\$1,000.00) for each separate violation of this section. If the violator fails to pay an assessment when it becomes final, the department may apply to the appropriate court for a judgment and seek execution of such judgment. Jurisdiction for the recovery of such penalties shall be in the chancery court of Davidson County, or the chancery court of the county in which all or part of the violations occurred. All sums recovered pursuant to this section shall be paid into the state treasury.

(c) Upon notification of the issuance of an order suspending or revoking a license issued under this part, the licensee shall promptly deliver such licensee's license to the commission.

SECTION 28. Service of process.

The commissioner may serve a notice or order in any contested case arising under this part by registered or certified mail to the licensee's most recent address of record in the files of the department. Notwithstanding any provisions of the law to the contrary, service in the manner specified herein shall be deemed to constitute actual service on such licensee.

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SECTION 29. Rulemaking and contract authority.

The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this part, pursuant to Tennessee Code Annotated, §§4-5-201, *et seq.* Nothing in this part shall prohibit the department from contracting with competent vendors to provide goods or services related to the implementation and administration of this act.

SECTION 30. Administrative procedures hearings and judicial review.

The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this Chapter. Before a license may be revoked, suspended or not renewed, the licensee shall be given notice and an opportunity for a hearing.

SECTION 31. This act does not affect contracts for adjusting entered into before the effective date of this act.

SECTION 32. If any provision of this act or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and, to that end, the provisions of the act are declared to be severable.

SECTION 33. This act shall take effect July 1, 2002. For the purposes of rulemaking by the commissioner, this act shall take effect upon becoming a law.